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In The Matter Of:
FEDERAL HOUSING FINANCE AGENCY v
UBS AMERICAS INC

July 31, 2012

SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
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<p>C7VAAFEDC1 Conference Page 5</p> <p>1 APPEARANCES</p> <p>2 KRAMER LEVIN NAFTALIS & FRANKEL LLP</p> <p>3 Attorneys for Individual Defendant Verschleiser</p> <p>4 BY: DAN R. JAMES</p> <p>5 MORRISON & FOERSTER LLP</p> <p>6 Attorneys for Individual Defendants Marano and Nierenberg</p> <p>7 BY: JOEL HAIMS</p> <p>8 GREENBERG TRAURIG LLP</p> <p>9 Attorneys for Individual Defendant Mayer</p> <p>10 BY: RONALD D. LEFTON</p> <p>11 SNR DENTON US LLP</p> <p>12 Attorneys for Individual Defendant Perkins</p> <p>13 BY: SANDRA HAUSER</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>C7VAAFEDC1 Conference Page 7</p> <p>1 and, if necessary, we'll have a more extensive discussion.</p> <p>2 Why don't I start by disappointing FHFA and I'll move</p> <p>3 on to the defendants.</p> <p>4 So let's talk about the staging of expert discovery.</p> <p>5 At our June 13 conference at page 14 I briefly outlined how I</p> <p>6 thought disclosures might proceed. Based on the materials that</p> <p>7 had been presented to me in advance of that conference which I</p> <p>8 noted at the time were very helpful to me, I came to the</p> <p>9 conclusions that the defendants would not agree to restricting</p> <p>10 discovery in this case to a sample of loan files. And that,</p> <p>11 indeed, the plaintiff wanted to reserve its rights as well</p> <p>12 potentially as affirmative defenses were played out to look</p> <p>13 beyond any initially designated sample of loan files.</p> <p>14 So as much as I was disappointed by that conclusion I</p> <p>15 shared that with you all on June 13th and outlined how I</p> <p>16 thought we might proceed with respect to expert discovery. And</p> <p>17 I know that the plaintiff is already on its way to making</p> <p>18 disclosures of samples and individual cases and it began that</p> <p>19 in the UBS case because that's our first tranche trial.</p> <p>20 And I think the defendants are right that the next</p> <p>21 thing that has to happen is for the plaintiff to make a</p> <p>22 disclosure of how it feels the misrepresentations and one, two</p> <p>23 or all three categories are playing out when you look at that</p> <p>24 sample.</p> <p>25 And then the next stage would be for the defendants to</p>
<p>C7VAAFEDC1 Conference Page 6</p> <p>1 (Case called)</p> <p>2 THE COURT: Thank you, everyone. Appreciate your</p> <p>3 appearance here today. We have a number of matters to address.</p> <p>4 So let me list the issues that I am aware of. We're going to</p> <p>5 talk about a schedule for expert discovery, what I'll refer to</p> <p>6 at this stage for expert discovery. We're going to talk about</p> <p>7 discovery of the plaintiff and its constituent entities beyond</p> <p>8 the PLS divisions or branches within those agencies.</p> <p>9 I am going to ask Ms. Shane for a status report on how</p> <p>10 we're doing with predictive codeine. I am hoping that a meet</p> <p>11 and confer process has resolved any disputes concerning</p> <p>12 discovery related to ResCap, but we'll see.</p> <p>13 I know I have been given two documents. I haven't had</p> <p>14 a chance to look at them. I want to say my two page letter</p> <p>15 limit had a good impact on attorney's time but has failed</p> <p>16 adequately to address the paralegal time issues but I made a</p> <p>17 good stab at getting through materials. I am not sure I've</p> <p>18 focused on precisely the passages you wanted me to but I've</p> <p>19 looked at a lot of material you've submitted. And counsel, of</p> <p>20 course, may have other issues they want to address today as</p> <p>21 well.</p> <p>22 I have good news and bad news for everybody. So</p> <p>23 depending on the issue, you will be happy or disappointed. So</p> <p>24 maybe I'll just start with some preliminary rulings on an issue</p> <p>25 and then give a chance to the disappointed parties to be heard</p>	<p>C7VAAFEDC1 Conference Page 8</p> <p>1 respond and it's possible that defendants will respond with a</p> <p>2 disagreement about the content of the plaintiff's sample and</p> <p>3 it's analysis of the extent to which misrepresentations appear</p> <p>4 in that sample or they may do their own sample of a larger or I</p> <p>5 suppose potentially smaller or just an intersecting group,</p> <p>6 different sample all together or they might not do any sample</p> <p>7 and that may change from case to case.</p> <p>8 It may change from misrepresentation to</p> <p>9 misrepresentation. And I don't think that's something I could</p> <p>10 control or would seek to control even if I could. And I feel</p> <p>11 as if the plaintiff wants to use this request to require the</p> <p>12 defendants to disclose a sample before they know what the</p> <p>13 plaintiff's position is with respect to the misrepresentations</p> <p>14 and the extent to which misrepresentations appear in the</p> <p>15 plaintiff sample.</p> <p>16 It's sort of way of managing discovery and of managing</p> <p>17 the litigation and that had been my hope but as I explained on</p> <p>18 June 13th I don't think that is going to fly for all the</p> <p>19 reasons I described then. So I think what we're left with is</p> <p>20 setting out a schedule, hopefully, one that we could agree to</p> <p>21 in the UBS case and that could be used as a model for the other</p> <p>22 tranches. So I am not saying that -- it would just be a model.</p> <p>23 The parties would have an opportunity to agree or disagree in a</p> <p>24 particular case that the model worked. But so I think what</p> <p>25 should happen is what has already begun in the UBS case and</p>

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1	THE COURT: So we're about to move into August. Will		1	Freddie's choice to put the Single Family and the PLS review of	
2	the defendants get some of this production in August?		2	Countrywide together where, obviously, both sides were going to	
3	MS. CHUNG: I think so, your Honor. I don't want to		3	hear whatever Countrywide had to say.	
4	represent that it's going to be a significant amount but I		4	Now, your Honor, I also will note that many of the	
5	think that everyone is finding it a challenge. So most of it		5	Fannie people on that very e-mail about the Countrywide	
6	will be through September. But there is material now in the		6	operational review are not on the custodian. Also missing from	
7	pipeline being used and being sent out so, yes, we will make		7	the custodian's list, your Honor, Freddie's CEO, Mr. Syron.	
8	some production. I don't want to overstate the situation		8	Freddie Exhibit 4 in the binder in front of you which I made	
9	because I think that there is -- we have a considerable number		9	reference to before the Special Litigation Committee's report	
10	of documents to review. We are undertaking to do it the old		10	says on pages 16 to 17, although Freddie Mac had been involved	
11	fashioned way on our side and so we need to get through those		11	in the subprime market prior to Mr. Syron's joining the company	
12	and produce them and I do think very much of it will be in		12	and even prior to 2000, the senior management under Mr. Syron	
13	September, not in August.		13	increased the company's involvement in that market. The person	
14	THE COURT: I have one more question for you,		14	responsible for Freddie's decision to take on more subprime	
15	Mr. --oh, I'm sorry.		15	securities largely through PLS isn't on the custodian list.	
16	MR. SCHIRTZER: Your Honor, I was just standing to		16	So, your Honor, again, we're not after more, per se.	
17	address the question.		17	We're after the right ones. And we have been deprived up till	
18	THE COURT: No. It was for Mr. Sacca.		18	now of the opportunity to ask questions that we think are	
19	MR. SCHIRTZER: Did I do it again?		19	necessary to decide who the right ones are. Your Honor has	
20	THE COURT: Yes. I wanted to know if the defendants		20	raised some very good questions that we would like answers to	
21	or at least UBS has decided at this point that it would like to		21	about if certain information reached the Private Label advisory	
22	brief the substantive law with respect to knowledge with		22	team. Do they consider to have been passed on or not? We	
23	respect to Section 11. And I ask that question because of		23	think this they have the amputation standard on its head. We	
24	Footnote Two on the defendants' submission for the July 31st		24	think under the third restatement of agency information is	
25	hearing and an undated letter that I think I got on the 30th.		25	imputed unless there's a duty to share it.	
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1	And this was a topic that we talked about at the May 14th		1	But, your Honor --	
2	conference and at pages 25 to 26 in which I offered to have		2	THE COURT: Let me ask you, on this ten page list of	
3	early motion practice on the standard for knowledge for Section		3	the document custodians, are there people who you think should	
4	11 claim. And at that time the thinking, as I understood it,		4	not be on that list?	
5	on the defense side was, no, it'd be too fact intensive a		5	MR. SACCA: We don't know yet entirely, your Honor. I	
6	question and would not be meaningful, helpful in the way that		6	am not -- it is possible that there are people that we after we	
7	I'd anticipated to have that legal discussion now.		7	learn a little more would think are not necessary. Like I	
8	Have the defendants changed their mind?		8	said, judge, I can't stress this enough, we're not out simply	
9	MR. SACCA: Your Honor, we have not. I think we still		9	to increase the number of custodians. We want to make sure we	
10	would welcome the opportunity to brief that after we have had		10	have the right ones.	
11	the chance to develop a more full record for your Honor, part		11	THE COURT: Okay. Thanks.	
12	of which would be the 30(B)(6) deposition, part of which would		12	MR. SCHIRTZER: Actually, your Honor, the example that	
13	probably be documents we get in production after that.		13	was just offered is almost too telling. They want Dick Syron,	
14	Your Honor, to respond very briefly to what		14	the former CEO and chairman of Freddie Mac. And their basis	
15	Mr. Schirtzer said, we saw the 30(B)(6) depositions. The		15	for wanting him is a couple of SEC complaints that claim that	
16	partys are agreed on that. We did for a reason, your Honor. A		16	he essentially led Freddie Mac into an overconcentration of	
17	narrative is all well and good for whatever limited purposes		17	subprime and didn't disclose it was the gist of the SEC	
18	but I can't cross-examine a narrative. I can't ask the		18	complaint.	
19	follow-up questions of a narrative and I can't ask clarifying		19	What they don't say is that Don Bisenius and Patty	
20	questions of a narrative. And we've seen plenty today to tell		20	Cook, the operational executive vice presidents or whatever	
21	us that we shouldn't take everything that's in this narrative		21	titles were immediately below him, were also defendants in that	
22	at face value. Mr. Schirtzer just said that where there were		22	same case and they're both custodians on our list which proves	
23	counter-party reviews done by Single Family and done by PLS		23	the point I am trying to make, that we have gone to the top	
24	they made an effort to strip out information. We've seen an		24	levels of the company, the people who had access to directories	
25	e-mail though that said that they did this review together at		25	that will encompass all sorts of information. And we've put	

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1 those people on custodian lists. To say that we need a 2 30(B)(6) deposition to identify an apexed opponent that's -- it 3 is what it is, your Honor. 4 THE COURT: Okay. Thank you. We're going to take a 5 brief recess. I want counsel to talk about the late August 6 date and whether an order in connection with that would be 7 helpful and whether or not reports, status reports on document 8 production late August before such a conference would be 9 helpful. I need the parties' guidance and if you could discuss 10 that together. We'll take a ten minute recess. 11 (Recess) 12 (Continued on next page) 13 14 15 16 17 18 19 20 21 22 23 24 25			1 THE COURT: I appreciate Mr. Sacca helping me focus on 2 precisely what relief is being sought with respect to the most 3 recent issue we have been discussing. To the extent the 4 request is for a 30(b)(6) deposition on item 3, that request is 5 denied. 6 I think that I can make a couple of observations here 7 beyond simply saying that request is denied that may have 8 broader implications and, hopefully, helpful guidance for the 9 parties. I think that specific request was just one of a 10 constellation of issues about the adequacy of FHFA's document 11 production and the number of custodians and the identity of the 12 custodians. 13 Let's step back and ask what this discovery of the 14 plaintiff is all about. To some extent I'm going to share 15 these thoughts because if you think I see things incorrectly, I 16 think it is important that you hear the way I'm thinking so you 17 can correct my thinking. Mr. Bennett, that even means pointing 18 out some law to me on occasion. 19 I don't think a defendant can proceed to trial here 20 unless a defendant believes they can successfully defend the 21 section 11 claim. I know there are these other issues in the 22 case, other claims of federal securities law violations and 23 fraud claims, but I think it is hard for a defendant to proceed 24 to trial unless they think they have a good defense on the 25 section 11 case.	
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1 THE COURT: Mr. Bennett, I understand I kept calling 2 you Mr. Williams. 3 MR. BENNETT: Yes, your Honor. 4 THE COURT: I apologize. 5 MR. BENNETT: That's quite all right, your Honor. The 6 "Edward Bennett" gets people confused all the time. 7 THE COURT: Someone earlier today mentioned that I was 8 going backwards. I'm going to do that again. I'm going to 9 revisit our first topic. 10 I think we should keep it simple. We should have the 11 Daubert motion addressed just to the protocol in the UBS case, 12 briefed by FHFA and UBS on roughly the schedule that the 13 plaintiffs proposed -- august 9th, August 31st, September 14 13th -- understanding that counsel will discuss the appropriate 15 schedule with each other that accommodates vacations and other 16 personal needs and get me a letter describing what schedule 17 they would like me to endorse. Then, any other defendant who 18 wishes to bring a similar Daubert motion based upon the 19 plaintiff's sampling protocol in their case may during the fall 20 talk with Mr. Selendy about a schedule. Write me and let me 21 know what your desires are. 22 Again UBS gets the great honor and privilege of being 23 the stalking-horse on the issue for everyone. 24 MR. KASNER: I would say thank you, your Honor, but 25 given my vehemence in reaction, I will sit mute.			1 The role of knowledge in a section 11 claim is a 2 limited one. Over and over again the arguments by defense 3 counsel to me this afternoon have talked about how information 4 from the single-family side of the enterprise was necessarily 5 shared with the PLS side and therefore necessarily appropriate 6 for discovery in this case. 7 The theme of the defense arguments has not been that 8 information held solely within the single-family side of the 9 business should be discoverable. The fear is that the document 10 production that is being undertaken by the plaintiffs will be 11 inadequate to capture information principally about originators 12 that was shared with the PLS side. I don't find any basis to 13 believe that that is a realistic fear. 14 First of all, the FHFA is making a massive production 15 here. As its description of the roles of the various 16 custodians that it has already agreed to make shows, they 17 represent many different functions within the GSEs, including 18 on the risk committees that were so much the focus of 19 discussion with me today. 20 If there was, as the defendants argue, a tying 21 together of the single-family and PLS function within these 22 organizations and substantial information sharing between the 23 two sides of the businesses within these organizations, and I 24 think I'm capturing the precise terms used this afternoon, 25 those documents are going to be captured in this document	

<p>C7vrfed4 Page 101</p> <p>1 production. If they aren't, come on back to me.</p> <p>2 There is no basis to argue now or to fear now that</p> <p>3 they won't be produced. And that is before I even get to the</p> <p>4 level of analysis that rule 1 would require me to undertake and</p> <p>5 a proportionality analysis, weighing the role that a knowledge</p> <p>6 defense is going to have in this case with the kind of</p> <p>7 intensive undertaking that FHFA is making and that the</p> <p>8 defendants are each going to be burden by.</p> <p>9 I think Mr. Sacca had a good point. He said it's not</p> <p>10 the number, it's the quality. And that's true. Everybody has</p> <p>11 to spend money looking at whatever is produced.</p> <p>12 I find that FHFA's production of a written response</p> <p>13 was to be commended. It was a much more reliable presentation</p> <p>14 of extremely complex matters, more reliable and more detailed</p> <p>15 than could have been received in any 30(b)(6) deposition under</p> <p>16 any time frame that could have been considered reasonable.</p> <p>17 I don't have a request from the defendants that is</p> <p>18 pinpointed. There has been only one name mentioned here of a</p> <p>19 custodian that should have been included and wasn't. I take</p> <p>20 that as a tribute to both sides here and the meet and confer</p> <p>21 process, and also in recognition that FHFA is taking its</p> <p>22 responsibilities seriously, that when it needs to reconsider a</p> <p>23 particular custodian, it's thinking about that and keeps adding</p> <p>24 when it finds it's appropriate to do so.</p> <p>25 These are layers of reasons which support each other</p>	<p>C7vrfed4 Page 103</p> <p>1 knowledge.</p> <p>2 I understand why your Honor focused on the section 11</p> <p>3 claim, which perhaps may impact the component of knowledge a</p> <p>4 bit differently than the affirmative element in a section 12</p> <p>5 claim, for example. However, there are other aspects of the</p> <p>6 defendants' defenses I wish to advise the Court to which this</p> <p>7 discovery relates. I assure the Court I'm not here to reargue</p> <p>8 your Honor's ruling.</p> <p>9 Issues of materiality are impacted by what is in the</p> <p>10 files that we were seeking, in the 30(b)(6) information that we</p> <p>11 were seeking, information with respect to reliance for those</p> <p>12 fraud defendants -- I am not one.</p> <p>13 THE COURT: Yes.</p> <p>14 MR. KASNER: -- and issues related to inquiry notice</p> <p>15 with respect to the statute of limitations we believe will all</p> <p>16 be impacted by those issues, your Honor, not simply actual</p> <p>17 knowledge.</p> <p>18 THE COURT: Yes, I understand that. I hope you</p> <p>19 weren't misled by my frank sharing of an analysis which was</p> <p>20 just one and not a necessary component to my ruling.</p> <p>21 MR. KASNER: I understood, your Honor.</p> <p>22 THE COURT: I would have ruled the same way without</p> <p>23 any reference to the knowledge component of the section 11</p> <p>24 claim.</p> <p>25 MR. KASNER: I understood that, your Honor. Your</p>
<p>C7vrfed4 Page 102</p> <p>1 for my ruling.</p> <p>2 MR. BENNETT: Your Honor?</p> <p>3 THE COURT: Yes?</p> <p>4 MR. BENNETT: I wasn't clear. We certainly are</p> <p>5 arguing that documents that never went, if there are any, never</p> <p>6 went from the home loan side to the PLS side are relevant, for</p> <p>7 a number of reasons.</p> <p>8 THE COURT: We have finished argument on that issue.</p> <p>9 It's late. Thank you so much, but those documents I will not</p> <p>10 order produced for all the reasons I have just described.</p> <p>11 Thank you.</p> <p>12 MR. BENNETT: Thank you, your Honor.</p> <p>13 THE COURT: Counsel, the two exhibits that you gave to</p> <p>14 me today, I want to make sure that all the materials that we</p> <p>15 have considered this afternoon in addition to these two</p> <p>16 handouts -- one, the custodian list, and the other the</p> <p>17 collection of documents that begins with an excerpt from a Form</p> <p>18 10-K -- if you could give me another set so I can make sure</p> <p>19 that everything is appropriately filed.</p> <p>20 MR. KASNER: Your Honor?</p> <p>21 THE COURT: Yes, Mr. Kasner?</p> <p>22 MR. KASNER: I'm not here to reargue, I assure the</p> <p>23 Court. I just wish to place on the record so your Honor knows</p> <p>24 that the issues as to which discovery was being sought that we</p> <p>25 discussed today do not relate solely to the issues of actual</p>	<p>C7vrfed4 Page 104</p> <p>1 Honor had indicated that that was your Honor's belief about the</p> <p>2 centrality of that component to our defenses. I just thought</p> <p>3 it was important to make plain on the record it's not just that</p> <p>4 issue. I understand what the Court is saying.</p> <p>5 THE COURT: The third paragraph in your submission of</p> <p>6 I believe July 30th lists a number of those other elements or</p> <p>7 the way knowledge relates to elements of a variety of claims</p> <p>8 and defenses. I did read that with care and I am well aware of</p> <p>9 it.</p> <p>10 MR. KASNER: Thank you, your Honor.</p> <p>11 THE COURT: I have what I thought was the 30(b)(6)</p> <p>12 issue in a set of letters raised in the first instance I think</p> <p>13 by FHFA with respect to four separate questions and a request</p> <p>14 that the 30(b)(6) witness not be redeposed. I believe someone</p> <p>15 wished to address that for the defendants.</p> <p>16 MR. WOLL: Yes, thank you, your Honor. David Woll for</p> <p>17 the defendants. As you noted, the plaintiff raised with the</p> <p>18 Court issues we had with the adequacy of two witnesses that</p> <p>19 were produced to testify with respect to, generally speaking,</p> <p>20 document retention issues. We submitted something this morning</p> <p>21 in response to that.</p> <p>22 We do have issues with respect to the adequacy of the</p> <p>23 30(b)(6) testimony on the document retention issues, but the</p> <p>24 fundamental issue I want to focus on is the Freddie Mac</p> <p>25 document destruction issue because I think it impacts really</p>

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<p>1 everything we have been talking about today in terms of</p> <p>2 custodians and scheduling.</p> <p>3 To briefly summarize, and I know it's late, the</p> <p>4 plaintiffs originally brought to our attention that Freddie Mac</p> <p>5 employed an automatic deletion protocol originally described to</p> <p>6 us as having been in place at least from January 2004 to</p> <p>7 September 2008. They told us during the week of June 29th,</p> <p>8 when we were talking about document custodians, that as a</p> <p>9 result of that protocol, basically any email that wasn't</p> <p>10 affirmatively saved for an employee prior to September 2008</p> <p>11 didn't exist anymore and any emails to an employee who left</p> <p>12 prior to 2008, those emails also wouldn't exist anymore, even</p> <p>13 if they had been affirmatively saved, because they would have</p> <p>14 been affirmatively discarded at the time of departure.</p> <p>15 Obviously, it is pretty fruitless to talk about</p> <p>16 document custodians if they don't have any documents. We</p> <p>17 thought it important to bring this to the Court's attention</p> <p>18 right away, which we did in a letter from Mr. Kasner on July</p> <p>19 2nd. Counsel for the plaintiff responded, noted that they had</p> <p>20 brought this to our attention because it was relevant to</p> <p>21 document custodians and discovery, and said in that letter,</p> <p>22 quote, "FHFA will continue to work in good faith to resolve any</p> <p>23 outstanding issues regarding e-discovery and to exchange</p> <p>24 information with defendants that bears on that effort." That</p> <p>25 sounded pretty good.</p>		<p>1 witness Mr. Keogh to testify about document retention policies</p> <p>2 and practices, quote, as they applied to the groups and</p> <p>3 individuals responsible for the securitizations.</p> <p>4 It certainly wasn't a surprise to the plaintiff that</p> <p>5 we were keenly interested in this, because we had written to</p> <p>6 them, we had written to the Court, and they said they were</p> <p>7 going to provide this information. But Mr. Keogh couldn't</p> <p>8 provide that.</p> <p>9 The other thing that troubled us, and still troubles</p> <p>10 us, and why I think we need to get to the bottom of this, is</p> <p>11 the description of this automatic deletion protocol has changed</p> <p>12 over time. The plaintiff, through counsel originally,</p> <p>13 represented what I just described, referring to January 4th of</p> <p>14 2008. Mr. Keogh submitted a declaration, which I cited in one</p> <p>15 of my letters, which was referenced in the letter to the Court,</p> <p>16 in another federal action where he said that documents prior to</p> <p>17 October 2007 had been automatically deleted, but then in</p> <p>18 October 2007 they ceased the recycling of backup tapes.</p> <p>19 Then, at his deposition Mr. Keogh said and plaintiff</p> <p>20 produced some information saying, hold on a second, we have</p> <p>21 lots of backup tapes for emails prior to October 2007, which</p> <p>22 was directly contrary to what it said in Mr. Keogh's</p> <p>23 declaration in this other federal action. We followed up with</p> <p>24 some more correspondence. We asked some more questions.</p> <p>25 In their letter to the Court yesterday, the plaintiff</p>	
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<p>1 We wrote a letter to the plaintiff on July 5th. I</p> <p>2 wrote that letter. Other letters followed on July 12th.</p> <p>3 Suffice it to say there were numerous requests to plaintiff to</p> <p>4 try and get to the bottom of this issue, which fundamentally is</p> <p>5 to what extent are there large gaps in the emails available for</p> <p>6 relevant custodians for the relevant period. We didn't get any</p> <p>7 answers, unfortunately, to those letters.</p> <p>8 We did make it part of our 30(b)(6) notice, which is</p> <p>9 why it comes up in this context now. One of the topics in our</p> <p>10 30(b)(6) notice, topic 1, was about the systematic deletion of</p> <p>11 potentially relevant documents pursuant to this protocol. The</p> <p>12 plaintiffs did produce a witness, on July 20th I believe, to</p> <p>13 testify with respect to topics 1, 2, 10 and 11 in the notice,</p> <p>14 all of which are document retention topics. His name was Rick</p> <p>15 Keogh. Mr. Keogh was not able to tell us anything about what</p> <p>16 custodians proposed either by the plaintiff or by the</p> <p>17 defendants had electronic documents remaining.</p> <p>18 We showed him the list of custodians that were</p> <p>19 proposed by the plaintiff at that point. We showed him some</p> <p>20 lists. We asked him, do you know what's available from any of</p> <p>21 the plaintiffs? He said no. The plaintiffs have taken the</p> <p>22 position that that is beyond the scope of the notice.</p> <p>23 It is certainly not beyond the scope of the notice as</p> <p>24 it was originally framed by us. We also don't think it is</p> <p>25 beyond the scope of the notice as they agreed to produce the</p>		<p>1 told you that, quote, "FHFA has advised defendants that each</p> <p>2 agreed Freddie Mac custodian has significant amounts of</p> <p>3 electronic information, including email, for the relevant</p> <p>4 period." They advised us at the same time they sent the letter</p> <p>5 to your Honor. We got a separate letter that included the same</p> <p>6 statement.</p> <p>7 Respectfully, I don't think that that statement, given</p> <p>8 what we know or have heard about the Freddie Mac auto deletion</p> <p>9 policy, really answers the question of whether there are large</p> <p>10 gaps in the emails that were apparently subject to some type of</p> <p>11 auto deletion policy.</p> <p>12 We don't know what are on the backup tapes that Mr.</p> <p>13 Keogh identified for the first time at his deposition. If</p> <p>14 there are substantial emails from custodians, I don't know</p> <p>15 exactly what that means. For instance, if somebody worked on</p> <p>16 deals in 2005 and I have emails for 2007, that's not going to</p> <p>17 help us very much.</p> <p>18 They have only identified that there are substantial</p> <p>19 emails for the initial custodians they agreed to. They had</p> <p>20 initially agreed to, I think, 38 Freddie Mac custodians. They</p> <p>21 say they are going to add more. I think it will bring them up</p> <p>22 to like 51. They say that should ameliorate our concerns. But</p> <p>23 we don't know if any of those extra custodians have any emails,</p> <p>24 so it doesn't really ameliorate the concerns.</p> <p>25 I don't think we can wait until the end of the</p>	